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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 511.

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA,
Petitioner,

vs.

SOUTHERN RAILWAY COMPANY,
a corporation,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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I. CONTRACTING-OUT WORK TO INDEPENDENT CONTRACTOR DOES NOT CONSTITUTE JURISDICTIONAL DISPUTE AS DEFINED BY TRANSPORTATION-COMMUNICATION EMPLOYEES UNION v. UNION PACIFIC R. R., 385 U. S. 157.

Respondent Southern Railway assumes in its Brief in Opposition that the Adjustment Board should re-examine its awards herein in light of an intervening decision of this Court which it argues is applicable to these matters. This position is based on the assumption that there exists in these cases work assignment disputes with a second union involved and thus the awards should be governed by the *Transportation-Communication* decision.

In the *High Point* case involved herein there is but one union, the petitioner, which has made a claim against the respondent for its having contracted-out work to an independent contractor, rather than to the petitioner. The

dispute involves work assigned to an outsider and not to a competing union. Consequently, this situation clearly falls outside the ambit of the jurisdictional disputes covered in *Transportation-Communication Employees Union v. Union Pacific R. R.*, where the carrier arbitrarily favored one union over another. Hence, the Electricians Union in *High Point* was not "involved" in the dispute between the Signalmen and respondent so as to require its being made a party to either the Board or the enforcement proceedings herein by virtue of Section 3 First (j) of the Railway Labor Act, 45 U. S. C. Sec. 153 First (j). Moreover, the Adjustment Board has given consideration to the Electricians contract with respondent. (R. p. 10.) To remand this dispute to the Adjustment Board would be a futile exercise, since the Board has in fact fully considered all relevant matters and there is no indication that a different result would obtain if the Board again considered this case.

II. FAILURE OF SHOP CRAFT UNION, IN SPARTANBURG CASE, TO ASSERT CLAIM AFTER NOTICE FROM BOARD SHOULD BE DEEMED AN ESTOPPEL.

In *Spartanburg* the respondent assigned the maintenance work on its new electrical car retarder system to employees represented by the Shop Craft Union. In order to comply with the requirements of Section 3 First (j), of the Act, *supra, the Board gave notice to the Shop Craft Union.* Petitioner submits that *once this union had been put on notice of the pendency of the dispute it had the duty of making its claim at the same time as the Signalmen or else subjecting itself to the possibility of being estopped from asserting its claim at a later time.* By failing to assert at the time of the petitioner's complaint whatever claim they may have had to the work assigned to them, they should be held to be estopped from changing their "response" and not now declared as a necessary party to

either the Board proceedings or enforcement action. To so require, as done by the court below, would in fact be forcing a union to make a claim which it has declined of its accord to make. In fact, the Shop Craft Union was not a necessary party to these proceedings since *it voluntarily chose not to become involved.* Its filing a "response" to the notification of the Board should be declared a general appearance sufficient to make the Board's decision res adjudicata as to the Shop Craft Union.

III. CONCLUSION.

Petitioner urges this Court to grant the writ of certiorari in order to declare that its decision in *Transportation-Communication, supra,* was not intended to apply to situations, such as this, where only one union is in fact "involved" in a dispute before the Board and where a union has been notified of the dispute, but has not chosen to assert its claim in response thereto.

Respectfully submitted,

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